

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



February 5, 1991

ALL COUNTY LETTER NO. 91-13

TO: ALL COUNTY WELFARE DEPARTMENTS
ALL COUNTY PROBATION DEPARTMENTS

SUBJECT: AID TO FAMILIES WITH DEPENDENT CHILDREN-FOSTER CARE
ELIGIBILITY REQUIREMENTS FOR CHILDREN LIVING WITH LEGAL
GUARDIANS

REFERENCE: ALL COUNTY LETTER (ACL) NO. 86-23

The purpose of this ACL is to clarify the Aid to Families with Dependent Children-Foster Care (AFDC-FC) eligibility requirements for children placed with legal guardians. This letter supersedes ACL 86-23.

BACKGROUND

The AFDC-FC Program provides payment to some legal guardians with whom an otherwise eligible AFDC-FC child has been placed. There are several requirements that must be met in order to establish and continue this eligibility.

Under the State AFDC-FC Program, payment may be made for an otherwise eligible child who is placed with a non-related legal guardian (Eligibility and Assistance Standards [EAS] Section 45-203.312). Under the Federal AFDC-FC Program, payment may be made for an otherwise eligible child who is placed with either a related or non-related legal guardian if the juvenile court's dependency order remains in effect.

FEDERAL AFDC-FC ELIGIBILITY

Federal AFDC-FC may be claimed for an otherwise eligible child placed with a related or non-related legal guardian only when a dependency order remains in effect. This is because the dependency order of the juvenile court always takes precedence over the legal guardianship order (Welfare & Institutions Code [W&IC] Section 304).

In other words, if a minor continues to be a dependent of the court and the placing agency retains care, custody, and control of the minor, the dependency order remains the authority for placement.

The dependency order must state that care, custody and control of the minor is vested with the placing agency. A dependency order stating "supervision" by the placing agency is insufficient for AFDC-FC eligibility purposes.

The Federal AFDC-FC Program requirements set forth in EAS 45-202 must be met, as well as all general program requirements in EAS 45-201. (EAS 45-201.411(a)(2), 45-201.42 and .43 apply only to State only AFDC-FC cases where a dependency order does not exist.)

For purposes of continued eligibility under the Federal AFDC-FC Program, whenever a caregiver secures a change in custodial status from foster parent to legal guardian, and the juvenile court subsequently dismisses the dependency order, eligibility under this program ceases to exist (EAS Section 45-202.62).

DISMISSAL OF DEPENDENCY ORDER

It is important to note that dependency status does not terminate automatically following the establishment of a legal guardianship.

W&IC Section 366.3 (a) states:

"The court may continue jurisdiction following the establishment of a legal guardianship, if continued jurisdiction is in the interests of the minor."

However, eligibility under the Federal AFDC-FC Program ceases to exist if and when the juvenile court dismisses the dependency order. Since the dependency order is the authority for placement for Federal AFDC-FC eligibility, payment cannot be made for a child living with a legal guardian once the dependency order is dismissed. Depending on whether the legal guardians are related or non-related to the minor, the consequences of this loss of dependency could mean loss of money or a change in program status.

Children living with non-related legal guardians, where the dependency order is dismissed by the juvenile court following the establishment of a legal guardianship, lose Federal eligibility under the AFDC-FC Program. Counties can no longer claim Federal reimbursement for these cases. If otherwise eligible, these cases can be made eligible under the State AFDC-FC Program, following the intra-program status change procedures outlined in All County Information Notice (ACIN) I-40-90, to ensure that no break in aid occurs.

However, children living with related legal guardians, where the dependency order is dismissed following the establishment of a legal guardianship, lose both Federal and State eligibility under the AFDC-FC Programs. In these cases, relatives may apply for

aid under the Federal AFDC-Family Group (FG) Program. Again, intra-program status change procedures outlined in ACIN I-40-90 must be followed to ensure that no break in aid occurs.

STATE AFDC-FC ELIGIBILITY

An otherwise eligible child placed with a non-related legal guardian may be eligible for State AFDC-FC. According to EAS 45-203.312, a child who lives with a non-related legal guardian meets the foster care authority for placement. In these cases, the child does not need to be a dependent of the court to be eligible under this program. Nevertheless, when a dependency order states that care, custody and control of a minor is vested in the County Welfare Department (CWD), the CWD has responsibility for placement and care of said minor.

Although services requirements in EAS Sections 45-201.411(a)(2), 45-201.42 and .43 are waived for children living with non-related legal guardians, this waiver only applies to legal guardianship cases without a concurrent dependency order. Whenever a dependency order states that care, custody and control of a minor is vested in the CWD, all services requirements under 45-201.4 and 45-203.61 must be met.

In addition, under this program, non-related legal guardians must cooperate with the CWD in its provision of social services specified in EAS Section 45-201.4 (EAS 45-203.611(c)). Whenever a non-related legal guardian does not cooperate with the CWD, as required by EAS 45-203.611(c), State AFDC-FC shall not be paid (EAS 45-302.241).

SOC 369

Because dismissal of a dependency order can affect a child's eligibility under the Federal AFDC-FC Program and impact a foster parent's economic status, it is critical that all foster parents be advised of the possible financial impact to the child's grant, prior to their decision to become legal guardians.

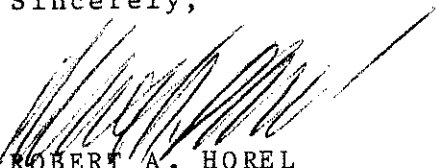
There is no longer a requirement imposed under King v. McMahon that foster parents be advised of the possible financial impact to the child's grant if the foster parents decide to become legal guardians. However, CWDs are encouraged to use the attached financial disclosure form (SOC 369) to advise foster parents of the possible changes to their grant. According to EAS Section 40-101.12, CWDs are required to perform administrative duties in such a manner as to secure for every applicant and recipient the amount to which he or she is entitled under the law.

Related foster parents, especially, need to be notified that the AFDC-FC payment amount they are entitled to as foster parents may change to an AFDC-FG payment amount, which is usually smaller than the AFDC-FC amount, if they become legal guardians.

To request copies of this State Form, please use County Forms Order GEN 727B.

Should you have any questions regarding AFDC-FC eligibility for children living with legal guardians, please contact your Foster Care Program Consultant, at (916) 445-0813.

Sincerely,



ROBERT A. HOREL
Deputy Director
Welfare Program Division

cc: CWDA

Attachment: SOC 369

**AGENCY-RELATIVE FOSTER PARENT
FINANCIAL DISCLOSURE****COMPLETE IN DUPLICATE:**ONE COPY TO: Relative Foster Parent
Child's Social Services Record**NOTE:** THIS FINANCIAL DISCLOSURE MUST BE COMPLETED PRIOR TO ANY CHANGE IN CUSTODIAL STATUS OF
RELATIVE FOSTER PARENT

NAME OF CHILD:	PARENT'S NAME:
DATE PLACED:	CASE NAME:

I understand that I am not required to change custodial status from relative foster parent to legal guardian.

I understand that by changing custodial status from a relative foster parent to a legal guardian, the above named foster child will not be eligible for an Aid to Families with Dependent Children-Foster Care (AFDC-FC) payment but will be eligible for an Aid to Families with Dependent Children-Family Group (AFDC-FG) payment. I further understand that a change in custodial status will result in a decrease in benefits. My current AFDC-FC payment is \$_____ per month and after I change my custodial status to legal guardian my AFDC-FG payment will be \$_____ per month. The decrease in my benefit level (payment) will start on _____.

I have read the foregoing and agree that all information herein contained is accurate.

SIGNATURE OF SOCIAL WORKER: ▶		SIGNATURE OF RELATIVE FOSTER MOTHER: ▶	
TITLE/AGENCY:		SIGNATURE OF RELATIVE FOSTER FATHER: ▶	
ADDRESS:		ADDRESS:	
TELEPHONE NUMBER ()		TELEPHONE NUMBER ()	
DATE:		DATE:	